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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/437,535	11/10/99	BREED D	ATI-207

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PM82/0519

EXAMINER	
TO,T	
ART UNIT	**PAPER NUMBER**
3619	7

DATE MAILED: 05/19/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No.	Applicant(s)	
	09/437,535	BREED ET AL.	
	Examiner	Art Unit	
	Toan C To	3619	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

1)☒ Responsive to communication(s) filed on *08 May 2000* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☐ Claim(s) *1-36* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☐ Claim(s) *1-36* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a)☐ All b)☐ Some * c)☐ None of the CERTIFIED copies of the priority documents have been:

1.☐ received.

2.☐ received in Application No. (Series Code / Serial Number) _____ .

3.☐ received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

Attachment(s)

14) ☒ Notice of References Cited (PTO-892)
15) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
16) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
17) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
18) ☐ Notice of Informal Patent Application (PTO-152)
19) ☐ Other: .

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of claims 1-36, Species 7 represented by Figure 9 which is in Paper No. 7 is acknowledged.

Information Disclosure Statement

1. The information disclosure statement filed November 10, 1999 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each U.S. and foreign patent; each publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 9 recites the limitation "the time" in line 2 and "the rate of gas flow" in line3. There is insufficient antecedent basis for these limitations in the claim.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-36 rejected under the judicially created doctrine of double patenting over claims of U. S. Patent No. 6,039,139; U.S. 5,653,462; U.S. 5,848,802; U.S. 5,829,782 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patents and is covered by the patents since the patents and the application are claiming

common subject matter, as follows: determining means, control means, receiving means and etc.

Furthermore, it appears that there is no new subject matter which have been disclosed in the specification of application and there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Thompson et al (U.S. 6,020,812).

Thompson et al discloses an arrangement for controlling deployment of a side airbag with the following: determining means (16) for determining the position of at least a part of occupant; controlling means (180) for controlling deployment of the side airbag (42b, also see column 4, paragraph 3-4 and column 5, paragraph 1).

6. Claims 20, 28 and 36 are rejected under 35 U.S.C. 102(b) as being anticipated by Thompson et al (U.S. 6,020,812).

Thompson et al discloses a method for controlling deployment of a side airbag with the following steps: determining means (16) for determining the position of at least a part of occupant; controlling means (180) for controlling deployment of the side airbag (42b, also see column 4, paragraph 3-4 and column 5, paragraph 1).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

8. Claims 2-9, 11-19, and 21-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thompson et al in view of Varga et al (U.S. 5,493,295).

Thompson discloses every element of the invention as discussed above except the following: the determining means comprise receiver means, processor means and transmitter means, wherein receiver means include an ultrasonic transducer and at least on receiver capable of receiving electromagnetic waves.

Varga et al teach an arrangement/methods for controlling deployment of a side air bag with the following apparatus/method steps: the determining means comprise receiver means (111), processor means (112) and transmitter means (110), wherein receiver means include an ultrasonic transducer and at least on receiver capable of receiving electromagnetic waves (see column 15-16 and abstract) in order to control

deployment of the side airbag based on the determined position of the occupant in case collision occurred.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify an arrangement for controlling deployment of a side air bag of Thompson et al as taught by Varga to include the following: the determining means comprise receiver means, processor means and transmitter means, wherein receiver means include an ultrasonic transducer and at least on receiver capable of receiving electromagnetic waves in order to control deployment of the side airbag based on the determined position of the occupant in case collision occurred.

Functional recitation(s) using the word "for" (e.g. "for controlling deployment of the side airbag") have been given little patentable weight because they fail to add any structural limitations and are thereby regarded as intended use language. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. *In re Casey*, 152 USPQ 235 (CCPA 1967); *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure includes the following: Blackburn et al (U.S. 6,018,693), Graye et

al (U.S. 5,997,033), Stanley (U.S. 6,007,095), Kithil et al (U.S. 6,014,602), Jinno et al (U.S. 5,948,031), White et al (U.S. 5,071,160), Fujita et al (U.S. 5,074,583), and Schweizer (U.S. 6,029,105) disclose the claimed limitations as discussed above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Toan To whose telephone number is (703) 306-5951. The examiner can normally be reached on Monday-Friday from 8:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai, can be reached on (703) 308-2486. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-2571.

Any inquiry of a general nature or relating to the status of this application or this application or proceeding should be directed to the receptionist whose telephone number is (703)305-1113.

To,T

May 17, 2000

Michael Mar 5-18-00

MICHAEL MAR
PRIMARY EXAMINER